S.B. Civil Writ Petition NO.5743/2003
Mohd. Sabir Ansari
vs
State of Rajasthan & Ors.

DATE OF ORDER : - 29.3.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr.Shreedhar Purohit, for the petitioner.
Mr.R.K.Rathi, for the respondent.
Mr. L.R.Upadhayay, Dy.GA, for the State.

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Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the vehicle in question was seized by the persons of the financier M/s. Tata Finance Ltd. and a criminal case was initiated by the petitioner and the learned Chief Judicial Magistrate (Sr.Div.) No.4, Jodhpur passed the order of release of the vehicle on 'Supurdaginama', copy of which is placed on record as Annex.1. According to learned counsel for the petitioner, the petitioner is not in possession of the vehicle in question and it is also submitted that there is no arbitration agreement between the petitioner and the respondents financier, still the respondent no.3 one B.B. Jain and Company has been appointed as arbitrator and this fact came to the notice of the petitioner when petitioner received the letter of the said B.B. Jain, Advocate dated 25th August, 2003 directing the petitioner to appear before him at Bombay Bar Association Room, Mumbai. Copy of the letter of said B.B.Jain, Advocate is placed on record as Annex.5.

The petitioner on receipt of the above letter of the alleged sole arbitrator, gave a telegram to the arbitrator. Copy of the telegram is placed on record as Annex.6. According to learned counsel for the petitioner, the arbitrator is proceeding wholly without jurisdiction because of the fact that there is no arbitration agreement in existence between the parties and the petitioner never gave any consent for appointing B.B. Jain as arbitrator. It is also submitted that the vehicle in question is not with the petitioner and because of the non-payment, the vehicle has also been auctioned by the State Government.

Since the arbitrator only issued a notice to the petitioner and in response to which the petitioner can submit his objection, therefore, this court is not inclined to entertain the writ petition in a mater of arbitration proceedings. It is settled law that all objections including the objection about the jurisdiction of the arbitrator as well as about the objection relating to the subject matter can be raised before the arbitrator and arbitrator has jurisdiction to adjudicate upon these questions, therefore, there appears to be no reason to hold an enquiry by this court whether there is arbitration agreement or not between the parties, particularly, in view of the fact that the petitioner took the vehicle in question on the basis of the finance agreement and the petitioner has not placed on record the finance agreement and the petitioner demanded copy of the agreement from the sole arbitrator by

saying that hire purchase agreement was not given by the financier to the petitioner and, therefore, the petitioner cannot file the reply for want of hire purchase agreement, which discloses that petitioner at one place says that there is no arbitration agreement and at the same time say that he had no knowledge of the terms of the finance agreement.

In view of the above, I do not find any reason to permit the petitioner to invoke the writ jurisdiction under Article 227 of the Constitution of India. Hence, the writ petition of the petitioner is dismissed. However, in case, the arbitrator has not decided the matter, then the petitioner may approach the arbitrator within a period of one month from today alongwith certified copy of the order,which may be submitted to the arbitrator.

(Prakash Tatia), J.

c.p.goyal/-